IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/07/2004

CORAM

THE HON'BLE MR. JUSTICE V. KANAGARAJ
and
THE HON'BLE MR. JUSTICE S. ASHOK KUMAR

Habeas Corpus Petition No.486 of 2004

Peter
No. 14 thennamara Theru,
Kaspa, Vellore,
Vellore Taluk & District. .. Petitioner

-VS-

1. State represented by
Secretary to Government
Prohibition & Excise
Department,
For St. George,
Chennai  9.

2. The District Magistrate,
and District Collector,
Vellore District
Vellore. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the relief as stated therein.

For petitioner : No appearance

For respondents : Mr. Abudu Kumar Rajarathinam
Government Advocate (Crl. side)

:O R D E R

(Order of the Court was delivered by V. KANAGARAJ,J.)

The son of the detenu is the petitioner herein and he has come forward to file the above petition praying to issue a Writ of Habeas Corpus to call for the records relating to the detention order in C3.D.O.No.17/2004 dated 13.3.2004 passed by the second respondent herein and quash the same as illegal and further direct the respondents to produce the detenu viz., Appunu, S/o. Arokiasamy, who is now confined in the Central Prison, Vellore, before this Court and set him at liberty forthwith.

2. Heard Mr. Abudu Kumar Rajarathinam, learned Government Advocate on the criminal side with no representation made on the part of the petitioner. Learned Government Advocate on the criminal side reports that there are four adverse cases registered against the detenu against whom the provisions of Act 14/1982 have been clamped as a Bootlegger.

3. On perusal of the records, it is seen that in paragraph 5 of the grounds of detention, it is stated that the detenu has filed a bail application before this Court in Crl.O.P.No.7633 of 2004 and the same was dismissed on 05.3.2004. The detaining authority has relied upon the dismissal order passed by this Court but the copy of the said dismissal order was not furnished to the detenu. Therefore, the wife of the detenu has sent a representation on 1.3.2004 and in spite of the same, the detaining authority has not furnished the copy of the said dismissal order. Failure to furnish the copy of the dismissal order might have prevented the detenu from making an effective representation for which, the detenu is entitled under Article 22(5) of the Constitution of India. This aspect is covered by an earlier judgment passed by a Division Bench of this Court in HCP No. 1496 of 2003 dated 19.12.2003, wherein it has been held as follows:-
"…. Even assuming that this is not a relied upon document, it cannot be disputed that it is a referred to document by the Detaining Authority. It is settled law that this is not a relied upon document, it cannot be disputed that it is a referred to when the referred to document was asked for, it must be furnished to the detenu to make an effective representation. In the instant case, a direction had been fairly given by the Government to the Detaining Authority to furnish the copy of the document. Even then, the copy of the document has not been furnished. This would amount to denial of right of the detenu to make an effective representation. On this ground, the detention order is vitiated and the same is liable to be set aside".

4. Given effect to the judgment cited supra, the order of detention is liable to be quashed and hence, the following order:-
In result,
(i) the above Habeas Corpus Petition is allowed;

(ii) the detention order dated 13.3.2004 in C3.D.O.No.17/2004 passed by the second respondent herein is quashed;

(iii) the detenu, viz., Appunu, S/o Arokiasamy, is directed to be set at liberty forthwith unless his detention is required in any other case.

Index:Yes
Internet:Yes.

ra.

To

1. The Secretary to Government of Tamil Nadu,

Prohibition & Excise Department,
Fort St. George, Chennai  9.

2. The District Magistrate and District Collector,
Vellore District.

3. The Superintendent of Police, Central Prison, Vellore.

4. The Joint Secretary to Government, Public (L&O),
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.